

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 99-3698

United States of America,

Appellee,

v.

Humberto Gonzalez-Jacobo,

Appellant.

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Appeal from the United States
District Court for the
Southern District of Iowa.

[UNPUBLISHED]

Submitted: September 7, 2000
Filed: September 20, 2000

Before BOWMAN, HEANEY, and HANSEN, Circuit Judges.

PER CURIAM.

Humberto Gonzalez-Jacobo appeals from the final judgment entered in the District Court¹ upon his guilty plea to a charge of illegal re-entry into the United States after deportation, in violation of 8 U.S.C. § 1326 (Supp. II 1996). The District Court sentenced Gonzalez-Jacobo to 77 months of imprisonment and three years of supervised release. On appeal, Gonzalez-Jacobo's counsel moved to withdraw pursuant to Anders v. California, 386 U.S. 738 (1967). Counsel's Anders brief only

¹The Honorable Robert W. Pratt, United States District Judge for the Southern District of Iowa.

raises the issue of whether the District Court erred in declining to depart downward on the grounds of cultural assimilation and disparate treatment of deportable aliens.

We conclude counsel's argument is unreviewable. See United States v. Correa, 167 F.3d 414, 417 (8th Cir. 1999) (holding that the denial of a downward departure is unreviewable where the district court considered the defense's arguments, found no extraordinary circumstances warranting departure, and did not indicate it lacked authority to depart); United States v. Field, 110 F.3d 587, 591 (8th Cir. 1997) (finding that "a discretionary decision not to depart . . . is unreviewable on appeal absent an unconstitutional motive").

In accordance with Penson v. Ohio, 488 U.S. 75 (1988), we also have reviewed the record for any non-frivolous issues and have found none. Accordingly, we now affirm and grant counsel's motion to withdraw.

The judgment is affirmed.

Heaney, Circuit Judge, concurring.

I concur in the result.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.